

**Testimony of I. Matthew Miller,
Legislative Committee Chair of the Property Management Association of Michigan
House Urban Policy Committee
October 27, 2009**

RE: HB 4094/4095

I appear before this Committee in support of the passage of HB 4094 and 4095 which were introduced by our friend, Rep. David Nathan. The Property Management Association of Michigan (PMAM), for which I serve as chair of the legislative committee, was the driving force behind the introduction of these bills and it is our hope that they will pass this year.

The bills both accomplish the same goals in that they amend identical language in two different statutes. Thus, both bills must pass for the changes we suggest to take effect.

The purpose of the bills is to rid rental properties of residents who commit two types of crimes on the premises of the rental property community sooner than is currently available in the law. One of the changes is targeted against drug offenders and the other against violent offenders. Neither of these changes affects the Due Process rights of the tenant, who, under any circumstances, cannot be evicted without a court hearing.

Drug Eviction

Currently, Michigan law provides that a tenant may be sued for termination of tenancy in the appropriate district court following the service of a 24-hour Notice to Quit in a circumstance where the "tenant, a member of the tenant's household, or other person under the tenant's control has unlawfully manufactured, delivered, possessed with intent to deliver, or possessed a controlled substance on the leased premises." The law also presently makes this statute only available where a "formal police report has been filed by the landlord." In other words, should the police raid the apartment or should a neighbor contact the police and inform them of drug manufacture or trafficking, then the landlord cannot pursue the 24-hour notice to quit because the landlord did not file a police report. To us, this seems counter-intuitive.

By requiring the landlord to be the source of the police report both supports the commission of drug crimes and endangers other residents.

The bills before the committee would remove the "formal police report" requirement. In essence, once there is sufficient evidence of drugs in the leased premises, the landlord may issue a 24-hour notice to quit, regardless of how the information about the drugs first came to light. The most common occurrence would be following a raid by the police where drugs were found in the leased premises. It is quite likely that the landlord would not know of the drugs until after the police raid but then would have proof of it. At that point, the landlord would then be able to issue the 24-hour notice to quit. The landlord would then file a case in court and rely upon the testimony of the police to prove the existence of drugs on the premises.

The concern about this provision seems to surround the prospect that a landlord, or other source of the information, would fabricate the existence of the drugs on the premises. That is a poor argument. In order for the eviction to take place, the landlord has the burden to prove that the drugs were on the leased premises in a court of law. The landlord would likely have to rely upon the police expertise to

prove the case and the tenant would have the absolute right to counsel, to trial, and even to a jury, if he so chose.

This provision will only be used when the landlord believes he can win the case, otherwise, it would be a waste of time and money to pursue it.

If these bills do not pass, the current situation requires the landlord to issue a 30-day notice to quit against the tenant and then follow suit to evict thereafter. So for those additional 29 days, the drug-using (or drug-selling, or drug-manufacturing) tenant gets to live in his apartment, endangering his neighbors and causing them fear of crime for no reason but for the fact that the landlord did not have the knowledge to issue a "formal police report" before the landlord was alerted to the situation by the police or another resident. This is a benefit in the law to no one but the drug offender.

It must be changed.

Violence Eviction

The second part of the bills adds a new notice to quit provision directed specifically at residents who commit a violent act or threaten to commit a violent act against another tenant or employee of the landlord while on the subject premises. This is a provision to fight crime and protect innocent people.

This provision would shorten the notice period from the current 30 days to 7 days. Again, there is no Due Process issue because following the 7-day period, in order to pursue the eviction, the landlord must file suit in the appropriate district court and carries the burden to prove his case. The tenant would still have all the same rights he has now following the filing of a 30-day notice to quit, including the right to trial, the right to counsel, and the right to a jury trial.

In a situation where a tenant assaults another tenant, the victim should not have to wait 30 days, while his assailant lives on the premises, before the landlord can pursue the eviction of the assailant. Likewise, employees of the landlord should not have to come to work in fear of violence following a threat from one of their residents. This change would allow the other residents and employees to evict a violent offender sooner so that they can go back to living a normal life and not having to live or work in fear of the threats or actions of a person who lives next door, or across the hall.

The landlord retains the burden of proving that the alleged threat or violent act took place. It remains up to the judge or jury to decide whether the landlord can meet that burden before the tenant can be evicted. Nothing in the law changes from what currently exists except the landlord would be able to file suit 23 days earlier than it can today. Considering the seriousness of violence or threats of violence, a tenant who takes such actions against other tenants or employees of the landlord should not get to intimidate other people by his presence on the premises for 30 days before the landlord can even start a lawsuit. It is simply unfair to the law-abiding citizens who have to put up with that delay and we urge the Legislature to enact this new category of a notice to terminate tenancy.

The PMAM considers these bills important improvements in the law, for the safety and benefit of apartment residents and employees. It is our hope the committee will pass these bills and pursue their enactment.